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# The BAR ASSOCIATION BULLETIN

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**(City and County—Organized 1888)**

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# The Law of Zoning

*By* ROLLIN L. MCNITT *of the Los Angeles Bar*

*Dean of Southwestern University Law School, and President, Board of City Planning Commissioners of Los Angeles*

It has been aptly said that "Zoning is a new science and its principles are being worked out by municipalities and the courts." As stated by the late Justice Lennon, in Miller v. Board of Public Works, (Cal., 234 Pac. 381, at page 384):

> "Roughly stated, these regulations, which may be called 'zoning regulations,' are divided into two classes: (1) Those which regulate the height or bulk of buildings within certain designated districts, in other words, those regulations which have to do with structural and architectural designs of the buildings; and (2) those which prescribe the use to which buildings within certain designated districts may be put."

For some time past the law has been fairly well settled by decisions, including those of the Supreme Court of the United States, as to regulations of *height* and *bulk*. The law respecting so-called *use* regulations is being carefully developed at the present time.

While the constitutionality of zoning legislation in this country had been reasonably assured by favorable decisions from many of the high courts of the various states of the Union, including the State of California, now that the matter has finally been determined by the United States Supreme Court, much of the doubt as to the validity of this type of legislation has been removed.

Until a few years ago it would have been generally answered that a statute or ordinance would not be sustained which sought to create a residence district from which all business buildings were to be excluded. A student of the growth and development of the exercise of the police power will readily see how rapidly the policy of the law in this regard has been changed. At an early date statutes or ordinances segregating certain objectionable businesses from residence districts were sustained. So, also, laws prohibiting obnoxious businesses within the vicinity of churches and schools were held to be a legitimate exercise of the police power. Cemeteries were relegated to certain sections. Undertaking establishments were taboo in residential districts. Heavy industries were excluded from light manufacturing districts, and so the growth has been gradual to the present attitude of our courts, in sustaining comprehensive zoning or use regulations.

The legislation authorizing so-called zoning ordinances is of comparatively recent origin, and it is not unnatural that those adversely affected should regard them as an unjust and unwarranted interference with their property rights. Continual assaults will be made upon this type of legislation. The pioneer nature of the legislation requires that it have careful consideration, tested by fundamental constitutional principles.

Everyone with a knowledge at all of the basis of zoning legislation is familiar with the fact that it is enacted, and its validity sustained, if at all, under the guise of the police power—that vast, illimitable, and undefinable power reserved to every state. If, therefore, the purpose and provisions of a zoning ordinance can be justified only by invoking police power, it must bear some substan-

tial and cognizable relation to the public health, public security, public morals, public welfare and the public comfort.

In fixing the limits of the police power, the courts are influenced not only by past usages and customs, constituting what is already history, but by current usage and custom, which is history in the making. As stated by the United States Supreme Court in the recent case of Village of Euclid v. Ambler Realty Co. (71 L. Ed.):

"Building zone laws are of modern origin. They began in this country about twenty-five years ago. Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities.

"Regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable.

"And in this there is no inconsistency, for while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise."

In other words:

"The police power, as such, is not confined within the narrow circumspection of precedents, resting upon past conditions which do not cover and control present day conditions obviously calling for revised regulations to promote the health, safety, morals, or general welfare of the public; that is to say, as a commonwealth develops politically, economically, and socially, the police power likewise develops, within reason, to meet the changed and changing conditions. What was at one time regarded as an improper exercise of the police power may now, because of changed living conditions, be recognized as a legitimate exercise of that power. This is so because:

"What was a reasonable exercise (of this power) in the days of our fathers may today seem so utterly unreasonable as to make it difficult for us to comprehend the existence of conditions that would justify same; what would by our fathers have been rejected as unthinkable is today accepted as a most proper and reasonable exercise thereof.' Streich v. Board of Education, 34 S. D. 169, 147 N. W. 779, L. R. A. 1915A, 632, Ann. Cas. 1917A, 760."

(Miller v. Board of Public Works (Cal.) 234 Pac. 381.)

## JUSTIFICATION FOR EXERCISE OF POWER

It is interesting to note the justification which the courts have found for the exercise of the police power in this particular field. Mr. Justice Sutherland, in his opinion in the recent Village of Euclid case, *supra*, reviews carefully the authorities and points out:

"The decisions enumerated in the first group cited above agree that the exclusion of buildings devoted to business, trade, etc., from residential districts, bears a rational relation to the health and safety of the community. Some of the grounds for this conclusion are—promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry; suppression and prevention of disorder; facilitating the extinguishment of fires and the enforcement of street traffic regulations and other general welfare ordinances; aiding the health and safety of the community by excluding from residential areas the confusion and danger of fire, contagion and disorder which in greater or less degree attach to the location of stores, shops and factories.

"Another ground is that the construction and repair of streets may be rendered easier and less expensive by confining the

greater part of the heavy traffic to the streets where business is carried on."

Mr. Justice Sutherland also quotes with approval the language of the Louisiana Supreme Court, which found the following basis for the exercise of the police power in the excluding of business occupants from residence districts:

"In the first place, the exclusion of business establishments from residence districts might enable the municipal government to give better police protection. Patrolmen's beats are larger, and therefore fewer, in residence neighborhoods than in business neighborhoods. A place of business in a residence neighborhood furnishes an excuse for any criminal to go into the neighborhood, where, otherwise, a stranger would be under the ban of suspicion. Besides, open shops invite loiterers and idlers to congregate; and the places of such congregations need police protection. In the second place, the zoning of a city into residence districts and commercial districts is a matter of economy in street paving. Heavy trucks, hauling freight to and from places of business in residence districts require the city to maintain the same costly pavement in such districts that is required for business districts; whereas, in the residence districts, where business establishments are excluded, a cheaper pavement serves the purpose. It is pointed out, too, that the fire hazard is greater in the neighborhood of business establishments than it is in residence districts. A better and more expensive fire department—better equipment and younger and stronger men—is needed in the business centers, where the buildings are taller, than in the residence districts.

"Aside from considerations of economic administration, in the matter of police and fire protection, street paving, etc., any business establishment is likely to be a genuine nuisance in a neighborhood of residences. Places of business are noisy; they are apt to be disturbing at night; some of them are malodorous; some are unsightly; some are apt to breed rats, mice, roaches, flies, ants, etc. Property brings a better price in a residence neighborhood where business establishments are excluded than in a residence neighborhood where an objectionable business is apt to be established at any time."

(State ex rel. Civello v. New Orleans, 154 La. 271, 33 A. L. R. 260.)

Continuing, Mr. Justice Sutherland points out:

"The matter of zoning has received much attention at the hands of commissions and experts, and the results of their investigations have been set forth in comprehensive report. These reports, which bear ever evidence of painstaking consideration, concur in the view that the segregation of residential, business and industrial buildings will make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; that it will increase the safety and security of home life; greatly tend to prevent street accidents, especially to children, by reducing the traffic and resulting confusion in residential sections; decrease noise and other conditions which produce or intensify nervous disorders; preserve a more favorable environment in which to rear children, etc.

"With particular reference to apartment houses, it is pointed out that the development of detached house sections greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district.

"Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary accomplishments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities —until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed.

"Under these circumstances, apartment

houses, which in a different environment would be not only entirely unobjectionable, but highly desirable, come very near to being nuisances.

"If these reasons, thus summarized, do not demonstrate the wisdom or sound policy in all respects of those restrictions which we have indicated as pertinent to the inquiry, at least, the reasons are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."

(Village of Euclid v. Ambler Realty Co., 71 L. Ed———.)

It must be constantly borne in mind that zoning ordinances are reviewable by the courts as to their reasonableness. While the courts have nothing to do with the question of the wisdom or good policy which may have prompted the legislative body to enact the ordinance, the courts can always inquire, in case of review, into the power of the legislative body and ascertain whether its exercise of that power has been reasonable and not arbitrary nor discriminatory, and whether or not it affects alike all persons similarly situated.

*A legal exercise of the power of enactment of zoning legislation requires that the restrictions imposed by the zoning ordinances be uniform and obligatory upon all persons and property alike, throughout the zone; that is to say, the regulation should operate uniformly upon all persons and property similarly situated, who may be affected thereby, and every ordinance must be tested by this basic principle.*

It may be suggested that no two pieces of property are similarly situated and this is, in a sense, true, but a zoning ordinance which affects alike all persons similarly situated, and which grants or denies the same privilege to any and every one in the district similarly situated, sufficiently meets all legal requirements.

## EFFECT UPON PROPERTY VALUES

The effect of zoning on the money value of real estate is a matter of importance. Oftentimes the owner of property attacks zoning legislation upon the ground that the regulation imposed affects substantially his property values. It should be pointed out, however, that there is no vested right in the proper and lawful exercise of the police power, and if the proposed regulation is for the general public welfare, the fact that it may incidentally affect adversely the values of one or more property owners' interests does not render the legislation invalid.

## INCIDENTAL INJURIES NOT TAKING OF PROPERTY

Since all zoning legislation is predicated upon the *lawful* exercise of police power, it does not involve in any sense the power of eminent domain; but it is oftentimes contended that the result of zoning legislation is to so injure property that it amounts to the taking of property in a constitutional sense. To those who oppose zoning legislation on this ground; to-wit, that it amounts to a taking of property, we have only to refer them to the lucid statement of the Supreme Court of the State of Wisconsin upon this subject (State ex rel. Carter v. Harper, 182 Wis. 148, 33 A. L. R. 279):

"Is is thoroughly established in this country that the rights preserved to the individual by these constitutional provisions are held in subordination to the rights of society. Although one owns property, he may not do with it as he pleases, any more than he may act in accordance with his personal desires. As the interest of society justifies restraints upon individual conduct, so, also, does it justify restraints

*(Continued on Page 25)*

# *Delaware Issues Charters To Big Number of Firms*

*(By Associated Press)*

DOVER, Del., Oct. 29.—Attracted to this state by one of the most liberal general incorporation laws found in the Union, between 65,000 and 70,000 corporations throughout the nation today are doing business under Delaware charters.

The features of the law which has made the state a Mecca to incorporators are few, but compelling. It is easy to comply with. It is speedy in operation. And it restricts the state's interest in, and supervision over, its charter holders to the apparent minimum compatible with the protection of stockholders.

## LIBERAL FEATURES ATTRACT

Financially, Delaware requires an organization fee of ten cents per $1000 for the first $2,000,000 of authorized capitalization, and five cents per $1000 thereafter. Upon issues of no-par stock an arbitrary value of $100 per share is set, for the purpose of taxation only. Because of this latter provision, the total corporate value of Delaware charters is undeterminable.

The annual tax also is levied, on the basis of authorized capitalization. Simple annual reports are necessary, but they do not require disclosure of the corporation's financial affairs. Of all the company's books and records, only an original or duplicate stock ledger must be kept in Delaware. Here, except for provisions safeguarding stockholders, the state's interest ceases.

## STOCK NOT TAXED

Stock held by non-residents is not taxed, nor is it subject to an inheritance levy. The corporation itself has no income tax to pay.

Incorporation can be completed within 24 hours. The incorporators need not personally appear or even be named. They may attend their first incorporators' meeting by proxy; the minutes and stock ledger will be mailed to them anywhere in the United States. Stockholders' and directors' meetings may be held anywhere.

Other powers of a Delaware corporation include issuance of any class of stock desired, with or without voting powers, and with no limitation upon the relative amounts issued or the rate of dividends.

# American Inns of Court *

By MABEL WALKER WILLEBRANDT, *Assistant Attorney-General of the United States*

Address delivered at dedication exercises of the University of Southern California Law School, February 4, 1926.

In England during centuries past there have existed four so-called Inns of Court, Grays Inn, Lincoln's Inn, the Inner Temple and the Middle Temple. These represent the best tradition in the training of lawyers. They partake of the nature of club, guild, law college and trade union. All are near Westminster and clustered about the superior courts.

The Middle Temple and Inner Temple, both near the River Thames, are so named because the buildings were part of the group of buildings in which was the famous Round Church of the Order of Knights Templar. When Spencer wrote his famous description in "Prothalamion,"

"There when they came, whereas those bricky towers,
The which on Themmes brode aged back doe ride,
Where now the studious lawyers have their bowers,
There whilom wont the Temple Knights to bide,
Till they decayed through pride."

three hundred years ago, these "temples" were then old. Perhaps their dignity, traditions and antiquity had silent influence in the professional training of the students living there. But something life in these old Inns gave that students of the law now too often miss. There was no cramming of legal treatises, no emphasis on recitation and long lectures. Rather, by mode of living, they imbibed the atmosphere of the law. They listened to the Sargeants at Law argue before the great judges, who had themselves necessarily belonged to the Order of the Coif, took notes, and then at night in the dining halls re-enacted the scenes of the day. As in a monastery those who chose to attain holiness so ordered their lives that its principles should become a part of them, so the legal student sought to *grow* into the stature of a lawyer. Professional contacts in the Inns and courts, long hours spent in moot cases, the exacting mental discipline and sharpening of wits from constant intellectual rivalry, built up a confidence and pride in his powers, and a faith in the greatness of the profession. Those who dwelt in the Inns of Court were preparing to make and administer law. They were devoted to the discovery and application of the yet undeveloped science of governing a nation.

So the history of the growth and development of English law and government is clearly interwoven throughout the centuries with the history of these Inns of Court. From within their walls came nearly all the great judges, lawyers and statesmen. The populace dimly realized before they could have put it into words that governmental reforms came or were prevented by the lawyers, and from the days of Jack Cade, and Gordon's riots in 1780, uprisings against established authority broke forth in attacks against the Inns of Court. It is a historical marvel that great constitutional reforms in England came with so little bloodshed. But few who marvel give credit to the clearheadedness of the rioters who marched first against the students of law to recruit them on the side of reform.

So becoming a lawyer meant in those

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early days in England the acquiring of habits of legal thought, making unceasing study of the processes of government, and developing a pride in the dignity, importance and eminence of the profession, with the consequent assumption of responsibilities and duties it imposed. Legal training should mean all that now. With government arising from the desires of great masses of people it is becoming more essential in America that the bar be a stabilizer to the nation as only it can be if its new recruits are so trained.

Judge John F. Dilon, one of the most scholarly of our Federal Judges, lecturing at Yale University several years ago, gave it as his opinion that these great Inns of Court are absolutely unique, so much so that we have, as he said, nothing in this country resembling them. However, this seems to me true only as to outward form, not as to substance and reality.

Our great American law schools, among which that of the University of Southern California has and will keep a high place, not only partake of the main characteristics of Inns of Court, but like the Inns of Court they furnish the means of gaining admission to the profession from which our judges are taken and our statesmen recruited. In prideful contemplation of this fine institution and in reverence for the common-law source of our own laws, it is not amiss to turn to these venerable English institutions to stimulate ambition to produce through our law schools here the result they produced in the mother country.

The chief aim of the law school is not so much to instruct on what the law *is*, not to equip the young man or woman with a bag of court-room tricks, but to implant deeply a fundamental understanding of the principles of law and how it has developed. Many "modern" lectures could well be replaced by Black-

stone's and Kent's commentaries, which too often have been relegated to the status of reference books or only supplemental readings.

The science of governing mankind has been slowly growing for centuries. At first it was not regarded as a science at all. In fact, only recently have we come to recognize it as such. The legal profession has borne the torch in discovery of these governmental principles and their orderly study and classification. But this classification discloses that balanced government must restrain both personal and business liberties. At what point restraint kills initiative and ceases to be for public good has been the focus of struggle in every regulatory law. No student may call himself a lawyer, however, until he is willing, rather more until he feels it a part of his professional obligation, to study the ends for which law exists. For example, torts are lifeless platitudes without study of the industrial relations between employer and employee which underlie decisions on picketing and labor activities during strikes. The best law school cannot afford to leave out those pragmatic considerations which are all important in democracies and which sway really great thinkers such as Justice Holmes, Roscoe Pound and Cardozo. I trust no man nor woman follows the law without frequent readings of Justice Holmes' "Collected Legal Essays," Roscoe Pound's "Spirit of the Common Law," or Cardozo's "Nature of the Judicial Process."

The objectives of the real school are to produce in the student a *legal habit of mind, a sound point of view* and give him a sense of personal *responsibility for the administration of justice.*

A legal habit of mind first analyzes the facts and then applies the law. It is slow to issue pompously curbstone opinions on what the statute says. Rather it knows where to find the law and maintains a nice discrimination as to what constitutes the best authority. Wallace, one of the early reporters of the Supreme Court, wrote a book entitled, "Wallace on the Reporters," where he classifies the relative values of various authorities. It is hard to find, but it should be a part of the library of every student and practitioner.

A sound point of view places proper value upon tradition and precedent, but it does not overlook the social and economic and business effects of their application. It stops short of "blowing the legal bubble till it bursts." A sound point of view is what Justice Holmes has maintained to his eighty-fourth year, and I venture to say is a big part of the reason that at an age when most men are laid aside, no faculty of his is dimmed, and he still remains a dominant and legal member of the greatest judicial tribunal on earth. A sound point of view recognizes in a government such as ours the importance of local laws and their enforcement. President Coolidge recalling to States and communities their responsibilities in this regard has awakened a responsive chord throughout the country, and with nice, and unspectacular discrimination he has readjusted misplaced values.

Most of us live from early babyhood to the grave in utter intellectual and emotional isolation. However dear our friends and family may be, there are but a few rare moments when we share with any of them a glimpse of the inner chambers of our consciousness. Yet to furnish it, to make it rich with ideas and stored with right responsibilities, faith and understanding, and well selected intellectual treasures, is the purpose of all education. The Inns of Court strove for that. There is something fine in the expression still used in England, "*He was called to the bar.*" To the true lawyer it is always a "call" to service. Many of

our colleges fall short of giving students a sustaining faith in government and a sense of responsibility to keep that faith justified. Dartmouth College today is largely recruited from sons of early Dartmouth men. It becomes a family tradition; its ideal of character and service is a living force. Law schools should mean that. Where they do their students would not hesitate to choose to be a Marshall, Lincoln, Holmes or Wigmore rather than the hired attorney for a Carnegie, Rockefeller or Schwab.

The public is impatient of lawyers, and recently of government, too. Rushing with business and transportation from a fast into a faster era, and observing the laws delay, the client feels like "Alice in Wonderland."

"Well, in our country," said Alice, still panting a little, "You'd generally get to somewhere else if you ran very fast for a long time as we've been doing."

"Slow sort of country," said the Queen, "Now *here* it takes all the running you can do to keep in the same place. If you want to get somewhere else you must run twice as fast as that."

Business is tired of the law's lagging behind. It drags the professions along after it and assumes a leadership the law once held. Thirty-one of the fifty-five framers of the Constitution were lawyers and from them to the period of the Civil War, from the bar were recruited the leaders in planning or carrying out the policies of government. Since 1865, business has gone into politics, and the lawyer no longer holds the dominant place in the destinies of the country. Too frequently he has become the legal clerk or hireling of business. Legislative policies grow out of the three-cornered contest between business, labor and social or moral organizations. The result is scattered governmental energies, minority rule, and frequently deplorable

conflict in laws. Is this to continue, and is the legal profession to become less and less a potent factor in government, more and more the shadow of business? The answer rests with law schools who have been content to train their men in only how to make a living at the law instead of the *joy* of living *in* the law.

It is axiomatic that at times of great public stress or danger the best trained assume the burden of the public's protection. An invasion threatened, and every young man who has had military training goes first to defend the nation. Let there be an epidemic and the doctors really stamp it out. Perhaps when influenza swept the country the physicians were not obliged to do more than other citizens, but they naturally did assume the leadership in meeting the emergency. So it is, if the administration of justice and the instrumentalities of government break down, the bar of the country should come forward, and law schools should train their youth to watch for and meet this responsibility.

The lawyer's profession fits him better for preserving the integrity of government than any other class in the community. He lives up to the best in his calling only to the extent that he aids in developing government in his community along orderly, constitutional and scientific lines. His individual and political morals may be faultless, but he has missed so much of the soul and spirit of the profession if he loses sight of his personal duty to "promote the administration of justice." He has been needed in the past. He is essential now. For it is true at the present time that lawlessness is rampant, that crimes are committed openly and with reckless daring. It is equally true that bringing the criminal to justice is a delayed and expensive process. It is true that many government agents sworn to uphold State and Federal constitutions prove unworthy of that trust. Instances of bribery may be found in almost every community. Levity at law and bravado in its violation are matters of daily experience. The left-over evils of war that take a generation or more to eliminate, the multiplication of statutes, the tremendous speed of travel with increased facilities for evading the law, thoughtless condonation of violations of the liquor laws, all contribute to bring about in many sections a deplorable state of governmental affairs.

Official corruption undermines all respect for authority and constitutes a national danger more serious than a threatened invasion of a physical foe or an epidemic of dread disease. The physicians whatever their individual medical views, would unite to fight the latter. Just as the soldier protects us in war, so is it the duty of the bar to defend the Constitution from attacks of the flippant and lawless in time of peace. Lawyers trained in Inns of Court would do so. Will American lawyers, trained in American colleges respond? It all depends on the spirit in the profession college has given.

One of the greatest needs in American life is systematic political thinking, speaking and writing. The Federal government has become so complex in the past twenty-five years that no President nor Attorney General at Washington can regulate the details of its administration. The great number of laws, responsibility for which has multiplied boards and bureaus and detective squads, have spread responsibility thin, and at the point of greatest strain official integrity breaks and corruption appears. The prohibition and narcotic laws are thin spots now. But as population increases and great centers are united by airplane, radio, and a consolidated press, the strain on governmental agencies propor-

*(Continued on Page 28)*

# *Message of the Los Angeles Ch[apter] of*
# *of Certified P[ublic] Ac[countants]*

The California C. P. A. law has been [in] our stat[ute] century and there are now over 500 public[ly] [ac]countan[ts] certificate.

Every State in the United States, the D[istrict] of C[olumbia] the Philippine Islands, has a C. P. A. law.

These statutes, now universally acc[epted] as es[tablishing] regulation by State authority, provide for certif[ication] equipped in the science and art of the profession of a

The requirements of the modern profession of acc[ountancy] of intensive study and practical training and[/]ential t[o] examinations which lead to the coveted C. P. A. certifi[cate]

Semi-annually, the identical examinations given form standard of professional requirement[s] [u]que in t[he]

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# *l Pu*c Accountants

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# News and Comment

## NEVADA INCORPORATION HANDBOOK FOR ATTORNEYS

The Nevada Agency and Trust Company, through its Los Angeles office, is announcing a handbook for attorneys on Nevada incorporation work. This book, according to Mr. W. F. Horner, manager of the Los Angeles office, is to be distributed free of charge to all attorneys requesting copies of it.

The handbook contains complete information as to the forms used under the Nevada laws, specimen of minutes, by-laws and articles; and in addition, the Corporation Act of March 31, 1925.

This book should prove a valuable reference book for lawyers interested in incorporation work. Mr. Horner states that no obligation is attached to attorneys for ordering copies, as the company is very anxious to place them in the hands of local attorneys, especially those interested in incorporation work.

Attorneys desiring copies should, as soon as possible, write or telephone the Nevada Agency and Trust Company, 1215 Chester Williams Building, MUtual 5934, as the local office wishes to know how many copies should be ordered to supply the needs of Los Angeles attorneys.

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## RECENT ACTIVITIES OF WOMEN LAWYERS' CLUB

In response to the need of bringing the Community Property Law of California in conformity with that of sister community states, relative to the vested interest of the wife, which makes it possible for other states to retain hundreds of thousands of dollars which would otherwise be paid over in Federal taxes, the Women Lawyers' Club of Los Angeles have appointed a committee to draft legislation covering the point, to be presented to the coming legislature.

In introducing the measure next session, the Committee was authorized to solicit the assistance of the Legislative Department of the California Federation of Business and Professional Women's Clubs, of whom Mrs. Margaret Yale, prominent woman lawyer of Burbank, is president. The Committee was further requested to ask the co-operation and assistance of the Los Angeles County Bar Association and also the State Bar Association, which has been done.

A number of meetings have been held and the Committee's draft is now ready to present to the Women Lawyers' Club for their final approval, after which it will be presented to the committees appointed by the State and County Associations for their action. This joint meeting is being called for early in next month, and the result of their deliberations will be printed in an early issue of the *Bulletin*.

In addition to the definitely settling of a vested right of the wife in community property, the women lawyers' Committee has felt that the changing economic conditions which have thrown thousands of married women into the business and professional world, presage a modification of the control of that portion of the community property which the wife actually earns. They realize, however, that such a step requires the most skillful handling, in order to work absolute justice for all parties concerned, and especially the creditors or third parties dealing with the community, and yet not to interfere with the protection the present law throws around the woman in the home. For the home woman, regardless of her contribution to the community

property (and frequently it is more than that of the married woman who is employed), and her skill in retail buying or handling of funds, is usually totally unskilled as to financial and business procedure and principles in a general sense.

The Committee is further drafting a bill which will require persons intending to marry to post a notice of such intention for five days before the license can be issued. A similar law is in effect in many states with excellent results.

The personnel of the Committee is as follows:

Miss Caroline Kellogg, Chairman.
Miss Josephine Stevenson, Vice-Chairman.
Mrs. Sara Houser.
Miss Ida May Adams.
Miss Orfa Jean Shontz.
Mrs. Margaret Connell.
Miss Peggy Halloran.
Miss Anne O'Keefe.
Mrs. Edna C. Plummer.
Miss Florence Woodhead.
Mrs. Oda Faulkener.

Miss Florence Bishoff, who is the president of the Women Lawyers' Club, is an ex-officio member of the Committee.

*(Continued on Page 24)*

# An Unfolded Opportunity

On page 21 of this issue of the *Bulletin* appears a special announcement of the law firm of Hewitt, Ford, McCormick & Crump. Our readers will readily appreciate the effectiveness of using the *Bulletin* for announcements of this type.

The advantages are two-fold. First, from the point of view of the firm making the announcement. The *Bulletin* presents a most excellent opportunity to convey messages of this character to the legal profession. A full-page announcement in the *Bulletin* costs the sum of $20.00; whereas, special engraved announcements mailed individually to members of the profession cost many, many times that amount. At the same time, we believe the announcement through the *Bulletin* is more effective. Practically every subscriber to the publication preserves a permanent file of its issues, and announcements appearing therein will be handy at all times for reference.

Secondly, from the point of view of the *Bulletin*. The *Bulletin* is your publication; its financial success depends upon the active co-operation and support of every member of the Association when appropriate occasions arise. Here is a very definite opportunity for you to demonstrate your co-operation and support.

If members of our Association will, as is expected, follow up the idea initiated by the firm of Hewitt, Ford, McCormick & Crump, the custom of making these announcements to the legal profession through the *Bulletin* will become firmly established. It will be a valuable source of revenue to the *Bulletin;* always, additional funds enable us to increase its scope of usefulness. At the same time, such use of the *Bulletin* will serve to stimulate genuine interest in its contents. We are endeavoring to have the *Bulletin* reflect the intimate affairs of our Association; here is a stride forward toward that goal.

We take this opportunity to express our thanks to Hewitt, Ford, McCormick & Crump for suggesting this novel idea. We urge, for the foregoing reasons, that all members of the Association make a like use of the *Bulletin* when the opportunity arises. We believe that in the development of this idea, a new opportunity for constructive service has unfolded itself.

# Case Notes*

ALBERT E. MARKS *of the Los Angeles Bar*

## FORECLOSURE OF STREET IMPROVEMENT BOND

In Coleman v. McCausland, No. 212357, Superior Court, Los Angeles County, decided December 20, 1926, Judge P. E. Keeler, as one of his final judicial acts before retiring from the bench, ruled that attorney's fees are not allowable in an action to foreclose a street improvement bond for delinquency in a semi-annual interest payment unless personal demand has been made upon the property owner before suit is filed.

The defendant McCausland with her husband and family were residing in their Beverly Hills home when the street improvement work was done and when the bond was issued on April 13, 1926. An interest payment of about $2.00 became due and payable on July 2, 1926. No demand for payment was made and no notice was given that the interest was due. Without any communication with the property owner suit to foreclose was filed. The complaint alleged the employment of an attorney to bring the suit, and the incurring of an expense of $7.50 for search of title to disclose the names of the owner and of any persons claiming an interest in the property. An attorney's fee of $75 was prayed for.

The matter came before Judge Keeler on motion to strike out the two paragraphs covering those two items. The bond was issued under the Street Improvement Act of 1911 and the prayer for attorney's fee was founded upon Section 76 of the act as amended in 1921. The law prior to 1921 provided for collection of the bond in case of delinquency by demand upon the City Treasurer (in this case the City Treasurer of Beverly Hills) and by publication of notice and sale of the property by the Treasurer with necessary costs added, amounting probably to not more than $2.00. The 1921 amendment added to the law a separate, distinct and cumulative remedy by way of foreclosure of the bond and contained this provision:

"The court shall also fix and allow a reasonable attorney's fee for the prosecution of said suit. Such premises, if sold, may be redeemed as in other cases. Such action shall be governed and regulated by the provisions hereof and also when not in confiict herewith by the codes of this state."

Also that the suit to foreclose shall be filed "in the same manner provided in this act for the foreclosure of the lien of delinquent assessments." The latter provision, it was contended by the defendant in moving to strike, refers to section 27 of the act in which we find this language:

"And in all cases of recovery under the provisions of this act, where personal demand has been made upon the owner or his agent, but not otherwise, the plaintiff shall recover such sum as the court may fix, in addition to the taxable cost, as attorney's fees, but not any percentage upon said recovery."

No personal demand was alleged in the complaint. It was argued on behalf of plaintiff that the special provision for attorney's fee in section 76 created an exception to the general provision of section 27 and, therefore, controlled. Judge Keeler held that the broad general provision of section 27 still controls and granted the motion to strike out the paragraph as to attorney's fee.

**Editor's Note*—The *Bulletin* will be pleased to accept for publication reviews of, and comments on, recent decisions; and members of the bar are urged to co-operate with Mr. Marks in making *Case Notes* a noteworthy feature of the *Bulletin*. Reviews should be mailed to the *Bulletin* office.

The same motion was granted as to the paragraph alleging an obligation incurred to pay $7.50 for a search of title. It was argued for the defendant that there is no authority in the law for including in the judgment for foreclosure the cost of the title search; that such items are so included in suits to foreclose mortgages because they are provided for in the mortgages and the obligation is a contractual one.

It is reported that more than a thousand of these foreclosure suits have been brought and that in most instances the property owner has surrendered without a fight, sometimes with a slight reduction of the attorney's fee. There is a feeling among lawyers who have acted for defendants in some of these cases that the procedure followed by the bond-holder amounts almost to extortion and that all such suits should be stubbornly resisted. A movement is on foot to amend the law to provide that the cost of street improvements shall be added to the tax bills, so that all property owners will have notice of their obligations and not be victimized. A little co-operation between attorneys for the various defendants probably would facilitate an appeal and a decision that would constitute a binding precedent. JOHN BEARDSLEY.

## PROBATE LAW—CONSTRUCTION OF WILLS

Testatrix devised and bequeathed to her mother certain residential property and also certain notes. The residential property was subject to the incumbrance of a mortgage. The will also contained the following provision: "I also desire that the said notes be collected, and the proceeds thereof, or so much thereof as may be necessary, be applied upon the payment of the indebtedness against the residence herein given to my said mother, and the balance of the proceeds of the collection of the said notes be paid to my

mother, by my executor hereinafter named." The Superior Court denied a petition for an order compelling the executor of the estate to pay out of the funds of the estate the balance due upon the obligation which had been secured by the mortgage, and thereby relieve the property of the incumbrance of the mortgage. Upon appeal, this judgment was reversed with instructions to enter an order granting the relief prayed for by the petitioner. Estate of Metcalfe, 72 Cal. Dec. 517. (December 3, 1926.)

Where the language of a will is precatory, it does not constitute an express direction to the executor, and consequently is not binding upon the executor. It expresses a wish rather than an order. As a general rule, the use of the word "desire" in a will is construed as precatory. (Estate of Marti, 132 Cal. 666.)

However, in construing a will, the court is always engaged in the task of ascertaining the intention of the testator, so far as it is humanly possible to determine objectively such intent. Standing alone, the word "desire" indicates a wish or a requst. But when a will is read in its entirety, and the meaning of the document as a whole is sought to be ascertained, it frequently appears that the testator intended to use the word "desire," either politely or ineptly, to express an order or direction, authorizing and binding the executor to take the necessary steps to accomplish the purposes set forth in the will.

In the application of these principles, considerable latitude necessarily exists, in order that the testamentary intentions of the deceased may be effectuated. It may even be that beneath the dignity and austerity apparent on the surface there exists in the mind of the judge a beneficent sympathy with the view of Mr. Dooley that wills are grand things since many a man doesn't get a chance to say a word in his household until after he dies.

In the principal case, the court, reading the will as a whole, was of the opinion "that the testatrix intended that the entire fee in the real estate so devised should go to the devisee, coupled with the bequest of sufficient money or its equivalent to clear off the incumbrance upon it, thus leaving her mother in possession and ownership of the property which had been the family home of both, free of debt. In order to render effective this clearly defined intention the testatrix proceeded to instruct her executor as to the course to be pursued by him in achieving the desired result. . . . When the intent of the testatrix is thus apparent to broaden, not to limit, the principal devise, the use of the word 'desire' in an instruction to her executor and for the purpose of achieving this result, has been held to have the effect of a direction as distinguished from a mere request and to be binding upon the executor of her estate."

ALBERT E. MARKS.

## NEWS AND COMMENT

*(Continued from Page 20)*

### SALARIES OF FEDERAL JUDGES INCREASED

President Coolidge has signed the bill increasing the salaries of Federal Judges, and the profession and the people at large may congratulate themselves that the Federal judiciary will at last be given salaries in some measure commensurate with the dignity and importance of their offices. The bill, as no doubt all the members of the Association are aware, increases the salaries of federal district judges from $7,500 to $10,000, circuit judges from $8,500 to $12,500, Associate Justices of the Supreme Court from $14,500 to $20,000, and the Chief Justice from $15,000 to $20,500. The bill also increases salaries of judges of the

United States Commerce Court to $10,000, the judges of the Court of Customs Appeals, the Court of Claims, and the Court of Appeals of the District of Columbia to $12,500, and judges of the Supreme Court of the District of Columbia to $10,000. The American Bar Association, through its Committee on Salaries of Federal Judges, was particularly active in urging the passing of the measure, and Chairman Andrews and the other members of the committee are entitled to take a great deal of satisfaction in the successful results of their efforts. It is to be hoped that this action of Congress will be given the consideration it deserves in those states which have as yet failed to make sufficient provision to enable their judges to meet the increased cost of living. . .—*American Bar Association Journal.*

## THE LAW OF ZONING

*(Continued from Page 8)*

upon the use to which property may be devoted. It was not intended by these constitutional provisions to so far protect the individual in the use of his property as to enable him to use it to the detriment of society. By thus protecting individual rights, society did not part with the power to protect itself or to promote its general well-being. Where the interest of the individual conflicts with the interest of society, such individual interest is subordinated to the general welfare. If in the prosecution of governmental functions it becomes necessary to take private property, compensation must be made. But incidental damages to property resulting from governmental activities, or laws passed in the promotion of the public welfare, are not considered a taking of the property for which compensation must be made. This has been stated over and over again, but probably as lucid a discussion of the principle will be found in Chicago, B. Q. R. Co. v. Illinois, 200 U. S. 561, 50 L. ed. 596, 26 Sup. Ct. Rep. 341, 4 Ann. Cas. 1175, as anywhere, where it is held, in the language of the syllabus: 'Uncompensated obedience to a regulation enacted for the public safety under the police power of the state is not taking property without due compensation, and the constitutional prohibition against the taking of private property without compensation is not intended as a limitation of the exercise of those police powers which are necessary to the tranquillity of every well-ordered community, nor of that general power over private property which is necessary for the orderly existence of all governments.' * * *

"Except in cases of nuisance, there is a reciprocity of benefits resulting from limitations imposed upon the use of property by general laws. He who is limited in the use of his property finds compensation therefor in the benefits accruing to him from the like limitations imposed upon his neighbor."

### ZONING SHOULD FOLLOW WELL DEFINED PLANS

A survey of the decisions affecting the validity of the class of legislation under discussion shows that many of the so-called zoning regulations that have been declared invalid for one reason or another have been preliminary or interim regulations. Piecemeal zoning is dangerous because it treats the same kind of property differently in the same community, and thus renders the particular ordinance subject to attack upon well-defined constitutional grounds.

Manifestly, however, there is a plain distinction between sporadic and piecemeal zoning, and a broad comprehensive plan involving the entire city and affecting all residents therein alike; and in an effort, not to promote the desires of a majority of a given district, but to promote the welfare of the city as a whole. Many legislative enabling acts provide that municipalities, in exercise of their delegated police power, may enact general zoning ordinances. Under such enabling acts, ordinances which are not in accordance with the well-considered plan are generally held by the courts not to be within the delegated authority, and hence

it is that ordinances which, without the adoption of any defined policy, pick out a portion of one street and declare it to be a residential district, and forbid the erection or maintenance of business structures, without some relation to the general welfare, are invalid.

Our Supreme Court has said (speaking in the Miller case) in reference to the relationship between partial zoning and comprehensive zoning:

> "Obviously, the purpose of comprehensive zoning is the attainment of unity in the construction and development of a city, along lines of reasonable regulations which tend to promote the health, safety, morals, and general welfare of the community, and it is equally obvious that to accomplish this purpose there must be definitely in the minds of the makers of comprehensive zoning a plan, in outline, at least, sufficiently extensive so that when embodied in an enacted ordinance a reviewer thereof may say with confidence that it will redound to the welfare of the city as a whole and that any part of that plan is reasonably related thereto. Of course, a comprehensive zoning plan should contemplate and provide for the planning from time to time of the execution of further details, extensions, and such modifications of existing features as unforeseen changes, occurring in the civic conditions, make necessary to the perfection and perpetuation of the plan.
>
> It is a matter of common knowledge that a zoning plan of the extent contemplated in the instant case cannot be made in a day; therefore we may take judicial notice of the fact that it will take much time to work out the details of such a plan and that obviously it would be destructive of the plan if, during the period of its incubation, parties seeking to evade the operation thereof should be permitted to enter upon a course of construction which might progress so far as to defeat in whole or in part the ultimate execution of the plan.
>
> It follows, it seems to us, that the fact that comprehensive zoning in the instant case had not matured to the point of being an enacted and existing ordinance, at the time the emergency ordinance in the instant case was enacted, does not detract from the validity of the latter ordinance upon the theory that there could be no assurance that the contemplated zoning ordinance would be ultimately enacted and enforced. The good faith of the council in enacting the ordinance in question is not challenged; nor is it asserted that the council will not proceed in good faith to the enactment of a general zoning ordinance and, in the absence of any issue concerning the good faith of the council, the presumption of fair dealing on the part of the council and the further presumption that they will not fail in the performance of an official duty must prevail. That being so, it may be fairly said, we think, that the ordinance in question, being, as it declares, an initial unit in the general zoning of the city, is part and parcel of a comprehensive plan which has relation to the welfare of the city as a whole and therefore it must be held that the ordinance in question is a valid exercise of the police power."
>
> (Miller v. Board of Public Works (Cal.), 234 Pac. 381, at page 388.)

## HOW FAR CONSENT OF PROPERTY OWNERS SHOULD INFLUENCE ZONE CHANGES

One of the most trying problems in connection with the administration of zoning legislation is the constant request of property owners that they be relieved from the operation of some particular provision of the zoning ordinance. They are continually asking for zone adjustments and special exceptions.

In approaching this problem it is interesting to note the attitude which the courts have taken where it has been attempted to enact into legislation the principle that changes in the uses allowable in a district may be permitted upon the written consent of a certain proportion of property owners thereof. Varying conclusions have been reached by the courts as to the validity of ordinances giving neighboring property owners the right by granting or withholding their consent to determine whether or not a permit for the erection or maintenance of a particular structure shall be used. Generally speaking, it may be said, however, that

"what a person shall do with his property cannot be determined by the protests of adjoining property owners." Ordinances prohibiting the erection of structures, unless the written consent of a required number of real estate owners within a radius of the property affected, is obtained, are generally held to be void for the reason that it is an attempted delegation of legislative power to private citizens.

Those decisions holding that the establishment or modification of a district based upon the written consent of a percentage of the owners of the property in the district, to be effective, is an unlawful delegation of legislative power, are apparently sound. If, for example, a store in a residential district is a menace to the comfort, safety, or general welfare of the public, so as to justify the exercise of the police power in its exclusion, such objection cannot be removed by the required consent of the neighboring owners.

To permit the exemption from a restriction, in case of the written consent of property owners within a specified distance from a proposed location, would also be invalid because it would be manifestly inconsistent with the enforcement of any comprehensive plan which the city might be carrying out.

It would seem, therefore, that while the wishes, desires, arguments, protests and representations of property owners that may be affected by the adoption or modification of zoning plans should be consulted and considered in arriving at a proper conclusion by the legislative body in enacting the legislation, or by the administrative body administering the same, that the same are not conclusive upon the legislative body, and if it is attempted in the legislation to make them so, that the legislation will be rendered invalid. It must always be remembered that zoning cannot be predicated upon personal preferences and sentiment. Once the administrative body allows personal preferences or sentiment to guide it in its consideration and application of zoning principles, the door is opened wide for discrimination and arbitrary action, which will in the end result in successful attacks upon the validity of any such acts; too many such attacks finally resulting in the breaking down of the zoning scheme and the legislation as a whole.

## EFFECTS OF ZONING LEGISLATION ON PENDING BUILDING OPERATIONS

Whether or not zoning legislation should be made retroactive in its operation is a matter addressed to the sound discretion of the legislative body enacting the same. Under proper circumstances probably this may be done, as where there is an element of nuisance in the use sought to be eliminated by the zone change. Whether businesses not of an obnoxious character, and otherwise lawful, can be so treated is perhaps doubtful, though persons interested in this subject should constantly keep in mind that there is no vested right as against the exercise of the police power where that exercise is not unreasonable, not arbitrary, not discriminatory — assuming always that it is a proper exercise of that power.

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**EDITOR'S NOTE: The foregoing article upon the Law of Zoning is in part an address delivered by Mr. Rollin L. McNitt before the League of California Municipalities on Monday, August 16, 1926, upon the same subject. Mr. McNitt's address in full, including profuse quotations from the authorities, has been published by A. Carlisle & Co., 251 Bush St., San Francisco, Cal., where copies of the same may be obtained.**

## AMERICAN INNS OF COURT

*(Continued from Page 14)*

tionately increases and weaknesses are bound to appear. Perhaps the real test of a democracy is whether it can survive these peace-time strains. If so, our government is in its period of greatest trial.

For an emergency faces us in the complex and over-stressed machinery of law enforcement. It needs well trained young lawyers with the traditions of legal integrity woven into their characters by colleges such as this university to step into places where the breakdown is occurring, there to tone up the administration of justice, and rebuild the faith of the country in the honesty of governmental endeavor.

The temptations for official corruption are great; the opportunities for official courage correspondingly so. Modern regulatory laws mean thousands of lawyers on the public payrolls. It is excellent experience for several years. In the investigating branches, such as the tax intelligence service, bureau of investigation, secret service, internal revenue and prohibition unit, the young lawyer can give his government more than the man not so trained.

I think now of a young man fresh from a Kentucky law college put into the responsible position of prohibition director of his State. His own Congressman, his father's friend, a man on whom depended his political chances in the future, sent $12,000 as a "fee" for him to do an irregular official act. He might have justified it with a warped conscience. It was not actually criminal, it could be called only bad judgment—but as a member of the bar, an officer of the court sworn to uphold the Constitution of the United States, in face of threats of political disaster he stood true to his own best ideals of public service. His record was a bright spot in the sordid Langley trial, wherein a United States Congressman was recently convicted and now resides in a government penitentiary.

The bar of the country should step into leadership. It should advise respecting legislation, strive to remove the conflict and inconsistency between laws, and from its ranks recruit reliable men and women to hold important posts in government. A bar, adhering to the best professional ideals can appropriately, and should, advise the appointing power on the fitness of lawyers to serve in public office.

Already many signs of its awakened responsibility can be seen in the activity of the American Bar Association and State associations in appointing committees or sections to study causes and cure for crime, methods for the adoption of uniform laws, and committees on the judiciary and new legislation. Stress already too great will increase if lobbyists are left alone to promote legislation designed to satisfy but a single class or group. Someone should know what the effect of the law will be before it is passed, whether it defends or promotes the ends for which laws are made. The lawyer is alone equipped professionally to assume such responsibility. The great universities must prepare him to do so. It is a noble aim to guard the nation's laws, to be the defender of its constitution, to develop the science of government.

Although inscrutable in its details, I firmly believe that there exists a *plan*, according to which the Great Intelligence, the existence of which we all acknowledge, brings about the orderly developmnet and advancement of the races and nations of men; that this plan includes the preparation of continents and islands in the sea for the reception of select peoples, who are to reach those

places at the proper times; that the movement, similar to that of the Sun, has always been westward, across Asia, and across Europe, the Atlantic Ocean and our American continent, and will finish its course, for the first cycle, when it crosses the Pacific and reaches the place of its first departure. And I believe, as we must all believe, that this plan includes a continual mental, moral and physical betterment of all the peoples of the world, to be brought about principally by the industry of great inventors, scientists, jurists, scholars and teachers.

America's part of the plan, it seems to me is to demonstrate the success of a true democracy gradually to achieve here a *self*-governing and *self*-restraining people. This means leveling the great mass up. Although in the theory of our government the people make and administer the laws, a select and trained class must guide. This class, the bar, should be the standing army of constitutional government, the leaders in legislative policy and the influential advisors to those who administer the nation's affairs.

We see clearly, then, that this great university is truly in the very van of the last great movement of this cycle, being placed here in a superbly beautiful and advantageous spot and having its personnel formed of fresh and virile materials, as little contaminated by the husks of painful experience as can be; and, knowing the character of those who assemble here, I am confident this university will do its part in the divine plan, that it will be an "Inn of Court" on the Pacific Coast, training its students into the legal habit of mind, a sound point of view and into a sense of responsibility for maintaining clean government, keeping official corruption at the minimum and developing in orderly steps a truly self-governing nation.